

Honorable Ronald B. Leighton

Court Use only above this line.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM S. BENDIXEN, and WESS
CORNELIUS, for themselves and all others
similarly situated,

Plaintiffs,

vs.

SPRINT COMMUNICATIONS COMPANY L.P.,
and LEVEL 3 COMMUNICATIONS, LLC,

Defendants.

Case No. 3:11-cv-05274-RBL

**Order and Judgment Approving Class-
Action Settlement and Directing Notice
of Final Approval**

WHEREAS, the parties to the above-captioned class action (the “Action”) entered into a Washington Class Settlement Agreement, as of September 19, 2012 and agreed to an Amendment to Washington Class Settlement Agreement on May 15, 2013 (collectively the “Settlement Agreement”) (terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement Agreement);

WHEREAS, Defendants and the Plaintiffs in the Action moved under Federal Rule of Civil Procedure 23(b) for an order certifying the class for settlement purposes, and under Rule 23(e) for an order preliminarily approving the proposed settlement of the Class Members’

1 claims in accordance with the Settlement Agreement and approving the form and plan of notice
2 as set forth in the Settlement Agreement;

3 WHEREAS, in its Order entered on October 12, 2012 (the “Preliminary Approval
4 Order”), the Court provisionally ordered that this Action may be settled as a class action on
5 behalf of the following class:

6 [A] class under the Settlement Agreement (the “Settlement Class”), defined as follows:

7 a class comprising all Persons who own or who claim to own, for any
8 period of time during a Compensation Period, any Covered Property,
9 provided, that “Settlement Class” or “Class” does not include: (1) Right-
10 of-Way Providers and their predecessors, successors, parents,
11 subsidiaries, and affiliates, past or present; (2) federal, state, and local
12 governmental entities; (3) Native American nations and tribes; or (4) any
Person who files a valid and timely exclusion on or before the Opt-Out
Deadline.

13 WHEREAS, the Preliminary Approval Order also approved the forms of notice of the
14 Settlement to Class Members and directed that appropriate notice of the Settlement be given to
15 Class Members;

16 WHEREAS, in accordance with the Settlement Agreement and the Preliminary
17 Approval Order: (1) the Settlement Administrator caused to be mailed to Class Members the
18 Notice of Class Action, Proposed Settlement, and Settlement Hearing (“Notice”) on March 1,
19 2013 and caused to be published the Summary Notice of Class Action, Proposed Settlement,
20 and Settlement Hearing (“Summary Notice”); (2) a Declaration of Mailing and Publication of
21 the Notice and Publication of the Summary Notice was filed with the Court prior to this
22 hearing; and (3) the Declaration of Mailing and Publication filed with this Court demonstrates
23 compliance with the Preliminary Approval Order with respect to the Notice and the Summary
24 Notice and, further, that the best notice practicable under the circumstances was, in fact, given;
25
26

1 WHEREAS, on June 14, 2013, this Court held a hearing on whether the Settlement
2 Agreement is fair, reasonable, adequate and in the best interests of the Class (the "Fairness
3 Hearing"); and

4 WHEREAS, based upon the foregoing, having heard the statements of counsel for the
5 Parties and of such persons as chose to appear at the Fairness Hearing; having considered all of
6 the files, records, and proceedings in the Action, the benefits to the Class under the Settlement
7 Agreement, and the risks, complexity, expense, and probable duration of further litigation; and
8 being fully advised in the premises,

9
10 IT IS HEREBY ORDERED AND ADJUDGED THAT:

11 1. The Court has subject-matter jurisdiction over the subject matter of the Action,
12 and personal jurisdiction over the Plaintiffs, Class Members, and the Defendants.

13 2. The Class Representatives and their counsel fairly and adequately represent the
14 interests of the Class Members in connection with the Settlement Agreement.

15 3. The Settlement Agreement is the product of good-faith, arm's-length
16 negotiations by the Class Representatives and their counsel, and Settling Defendants and their
17 counsel, and the representatives of the Settlement Class and Settling Defendants were
18 represented by capable and experienced counsel.

19 4. The form, content, and method of dissemination of the notice given to Class
20 Members, including both published notice and individual notice to all Class Members who
21 could be identified through reasonable effort, were adequate and reasonable and constituted the
22 best notice practicable under the circumstances.

1 5. The Settlement Agreement is fair, reasonable, adequate, and in the best interests
2 of Class Members, and is approved in all respects, and the parties are directed to perform and
3 satisfy the terms and conditions of the Settlement Agreement.

4 6. Class Members shall be permitted to make claims for the benefits described in
5 the Settlement Agreement, subject to the conditions and limitations stated herein.

6 7. The certification of the Settlement Class, under Rules 23(b)(3) and 23(e), solely
7 for settlement purposes, is hereby confirmed.

8 8. The notice, as given, complied with the requirements of Rule 23, satisfied the
9 requirements of due process, and constituted due and sufficient notice of the matters set forth
10 therein.

11 9. After this Order and Judgment has become Final, an order awarding attorneys'
12 fees to Settlement Class Counsel with respect to the Settlement Agreement becomes Final, and
13 all periods during which any Party to the Settlement Agreement may exercise a right of
14 withdrawal have expired (hereafter "the Effective Date"), the Settling Defendants and all other
15 Released Parties, including, without limitation, the Right-of-Way Providers listed in Exhibit L
16 to the Settlement Agreement, a copy of which is attached hereto and incorporated by reference
17 herein, shall be released from any and all Settlement Claims that any Class Member (and all
18 successors in interest) had, has, or may have in the future, against the Settling Defendants or
19 any other Released Party. This Release may be enforced by any Released Party.

20 10. All Settlement Claims of any Class Member (and the successors in interest of all
21 members of the Settlement Class) are hereby dismissed. Upon the Effective Date, such
22 dismissal shall be with prejudice.

1 11. Upon the Effective Date, the Class Members (and the successors in interest of
2 all members of the Settlement Class) shall be barred and permanently enjoined from instituting,
3 asserting, or prosecuting against a Settling Defendant or any other Released Party, including,
4 without limitation, the Right-of-Way Providers listed in Exhibit L to the Settlement Agreement,
5 any and all Settlement Claims they have, had, or may have in the future, against a Settling
6 Defendant or any other Released Party, except any claims for enforcement of a Settlement
7 Agreement.

9 12. The various forms of the Claim for Landowner Benefits and Releases of Claims
10 (the “Claim Form”), and the Telecommunications Cable System Easement Deed, set forth as
11 Exhibits G, J and J(1), and H respectively, to the Settlement Agreement, are approved. In order
12 to receive Benefits under the Settlement Agreement, all Class Members must comply with the
13 requirements for making and documenting a Claim that are set forth in that Settlement
14 Agreement.

16 13. All Class Members who are Current Landowners, regardless of whether they file
17 a Claim, are hereby ordered to execute and deliver, after the Effective Date, a
18 Telecommunications Cable System Easement Deed to the Claims Administrator in favor of
19 each Settling Defendant whose Telecommunications Cable System was installed on Covered
20 Property owned by the Class Member.

22 14. In order to receive Benefits, each Current Landowner who submits a Qualified
23 Claim must execute a Telecommunications Cable System Easement Deed.

24 15. Upon the Effective Date, the Claims Administrator shall be authorized under
25 Federal Rule of Civil Procedure 70 to execute and deliver to each Settling Defendant a Claims
26

1 Administrator Telecommunications Cable System Easement Deed, substantially in the form of
2 Exhibit I to the Settlement Agreement, on behalf of all Class Members who are Current
3 Landowners and who do not personally execute and deliver a Telecommunications Cable
4 System Easement Deed. Any Class Member who is a Current Landowner and who does not
5 file a Claim may rely upon the Claims Administrator to execute and deliver to each Settling
6 Defendant the Claims Administrator Telecommunications Cable System Easement Deed.
7

8 16. The Claims Administrator is hereby appointed as attorney in fact for each Class
9 Member who is a Current Landowner, with power and authority, upon the Effective Date, to
10 execute and deliver a Claims Administrator Telecommunications Cable System Easement
11 Deed, substantially in the form of Exhibit I to the Settlement Agreement, to the applicable
12 Settling Defendants and to authorize such Settling Defendants to record such Claims
13 Administrator Telecommunications Cable System Easement Deed as provided in Section
14 IV.C.2 of the Settlement Agreement.
15

16 17. Upon the Effective Date, the Settling Defendants or Settlement Class Counsel
17 may, at their respective option and cost file, record and/or index the Easement Deed by Court
18 Order in Settlement of Landowner Action, entered contemporaneously with this Order and
19 Judgment, or notice thereof, and any executed Telecommunications Cable System Easement
20 Deed, on behalf of any Class Member, in the judgment or land records of the county in which
21 the real estate is located as provided in IV.C.2 of the Settlement Agreement. The Court retains
22 jurisdiction, as provided pursuant to Section VIII.A.1.(n) of the Settlement Agreement, to enter
23 supplemental orders and judgments to effectuate the recordation of any and all rights conveyed
24 to the Settling Defendants under the Settlement Agreement.
25

1 18. The expenses of administering the Settlement Agreement shall be paid from the
2 Administrative Account in the manner set forth in the Settlement Agreement.

3 19. Upon the Effective Date, the Released Parties shall be released by all Class
4 Members from any and all claims, damages, costs, expenses, and other liabilities of every kind
5 and nature whatsoever as a result of or in any way in connection with the filing, recordation, or
6 indexing of the Easement Deed by Court Order Deed in Settlement of Landowner Action, or
7 notice thereof, or any Telecommunications Cable System Easement Deed, except claims to
8 enforce the Settlement Agreement and/or this Order.

9
10 20. It is hereby declared, adjudged, and decreed that, upon the Effective Date, the
11 Settlement Agreement provides the exclusive remedy for any and all Settlement Claims of
12 Settlement Class Members (and any successors in interest) against the Settling Defendants and
13 any and all other Released Parties.

14
15 21. Upon the Effective Date, all claims against the Class Representatives, or their
16 counsel or any of them, arising out of, relating to, or in connection with the Action shall be
17 released by the Settling Defendants and their counsel, and they shall be permanently enjoined
18 and barred from instituting, asserting, or prosecuting any and all claims that the Settling
19 Defendants or their counsel or any of them had, have, or may in the future have against the
20 Class Representatives or their counsel, except claims to enforce the Settlement Agreement
21 and/or this Order.

22
23 22. Upon the Effective Date, all Class Members (and all successors in interest),
24 whether or not they file a Claim for Landowner Benefits, shall be permanently enjoined and

1 barred from instituting, asserting or prosecuting, either directly or as a class representative, any
2 Settlement Claims.

3 23. The form of the Notice of Final Approval of Settlement, set forth as Exhibit F to
4 the Settlement Agreement, is approved. Upon this Order and Judgment becoming Final, the
5 Settlement Administrator shall within thirty (30) days thereafter cause the Notice of Final
6 Approval Package to be sent by United States mail, first class postage prepaid, to all Class
7 Members who have been identified, who requested copies, or who otherwise came to the
8 Claims Administrator's attention.

9 24. Any claims by the Settling Defendants against any Right of Way Providers,
10 insurers or other third parties for contribution, indemnification, or insurance benefits, are not
11 barred, released, or otherwise affected by the Settlement Agreement or this Order and
12 Judgment.

13 25. Incentive awards to the Class Representatives in the following amount are
14 reasonable and are approved: William S. Bendixen: \$1,300; and Wess Cornelius: \$1,300.

15 26. Defendants shall deposit any attorneys' fee award approved by the Court, which
16 shall not exceed the Maximum Attorneys' Fee Award, into the interest-bearing escrow account
17 established with U.S. Bank in New York, New York, no later than ten (10) days after the date
18 on which the Order and Judgment becomes Final.

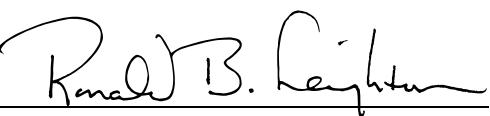
19 27. The Court hereby reserves its exclusive, general, and continuing jurisdiction
20 over the parties to the Settlement Agreement, including Defendants and all Class Members, as
21 needed or appropriate in order to administer, supervise, implement, interpret, or enforce the
22
23
24
25
26

1 Settlement Agreement in accordance with its terms, including the investment, conservation,
2 protection of settlement funds prior to distribution, and distribution of settlement funds.

3 28. In the event that any Settling Defendant withdraws from the Settlement
4 Agreement, the portions of this Order and Judgment that are issued to implement that
5 Agreement shall have no further force and effect as to that Settling Defendant, any Class
6 Member who has a claim against that Settling Defendant, and any Person who would have been
7 released or otherwise affected by that Settling Defendant's Designation of Right of Way.
8 Withdrawal from a Settlement Agreement shall not affect the provisions of this Order and
9 Judgment that relate to Settling Defendants who do not withdraw.

10 29. If this Order and Judgment is not a final judgment as to all claims presented in
11 the Action, the Court hereby determines, pursuant to Federal Rule of Civil Procedure 54(b),
12 that there is no just reason to delay the appeal of all claims as to which final judgment is
13 entered.

14 SO ORDERED this 14th day of June, 2013.

15
16
17
18
19 
20 RONALD B. LEIGHTON
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26

1 Presented by:

2 /s/ Dan Millea

3 Dan Millea, *pro hac vice*

4 **ZELLE HOFMANN VOELBEL & MASON LLP**

500 Washington Avenue South, Suite 4000

Minneapolis, MN 55415

Telephone: (612) 339-2020

Facsimile: (612) 336-9100

E-Mail: dmillea@zelle.com

7 *Attorney for Plaintiffs*

8 /s/ Emily J. Harris

9 Emily J. Harris, WSBA No. 35763

Meredith L. Rugani, WSBA No. 42283

10 **CORR CRONIN MICHELSON**

11 **BAUMGARDNER & PREECE LLP**

12 1101 Fourth Avenue, Suite 3900

Seattle, Washington 98154

Telephone: (206) 625-8600

Facsimile: (206) 625-0900

E-Mail: eharris@corrchronin.com

13 mrugani@corrchronin.com

14 *Attorneys for Defendants*

EXHIBIT L

Released Right-of-Way Providers

Union Pacific Corporation, Union Pacific Railroad Company, Southern Pacific Rail Corporation (together “Union Pacific”); BNSF Railway Company, Burlington Northern and Santa Fe Railway Company, The Atchison, Topeka and Santa Fe Railway Company, Burlington Northern Railroad Company (together “BNSF”); Chicago, Milwaukee, St. Paul & Pacific Railroad; and any of the predecessors-in-interest, predecessors-in-title, successors-in-interest, successors-in-title, members, partners, affiliates, lessees, subsidiaries, parents, assigns, related entities, agencies or officials of and any railroads or terminal railroads wholly owned or partially owned by each of the Right-of-Way Providers named above.